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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MARY L. TRESLER, A.T.
1452 Love Way
Auburn, California

Physical Therapy Assistant No. AT 2054

Respondent.

Case No. 1D 2000 62582

**FIRST AMENDED
A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about August 3, 1989, the Physical Therapy Board of California issued Physical Therapy Assistant license number AT 2054 to Mary L. Tresler ("Respondent"). The Physical Therapy Assistant license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (“Board”), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code provides, in part:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

6. Section 2234 of the Code states:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

(b) Gross negligence.

1 (c) Repeated negligent acts. To be repeated, there must
2 be two or more negligent acts or omissions. An initial negligent
3 act or omission followed by a separate and distinct departure from
the applicable standard of care shall constitute repeated negligent
acts.

4 (1) An initial negligent diagnosis followed by an
5 act or omission medically appropriate for that negligent diagnosis
of the patient shall constitute a single negligent act.

6 (2) When the standard of care requires a change
7 in the diagnosis, act, or omission that constitutes the negligent act
described in paragraph (1), including, but not limited to, a
reevaluation of the diagnosis or a change in treatment, and the
8 licensee's conduct departs from the applicable standard of care,
each departure constitutes a separate and distinct breach of the
9 standard of care.

10 (d) Incompetence.

11 (e) The commission of any act involving dishonesty or
12 corruption which is substantially related to the qualifications,
functions, or duties of a physician and surgeon.

13 (f) Any action or conduct which would have warranted
14 the denial of a certificate.

15 7. Section 2620.7 of the Code states:

16 A physical therapist shall document his or her evaluation,
17 goals, treatment plan, and summary of treatment in the patient
record. Patient records shall be maintained for a period of no less
18 than seven years following the discharge of the patient, except that
the records of unemancipated minors shall be maintained at least
19 one year after the minor has reached the age of 18 years, and not in
any case less than seven years.

20 8. Section 2661.5 of the Code states:

21 (a) In any order issued in resolution of a disciplinary
proceeding before the board, the board may request the
22 administrative law judge to direct any licensee found guilty of
unprofessional conduct to pay to the board a sum not to exceed the
23 actual and reasonable costs of the investigation and prosecution of
the case.

24 (b) The costs to be assessed shall be fixed by the
administrative law judge and shall not in any event be increased by
25 the board. When the board does not adopt a proposed decision and
remands the case to an administrative law judge, the administrative
26 law judge shall not increase the amount of the assessed costs
specified in the proposed decision.

27 (c) When the payment directed in an order for payment
28 of costs is not made by the licensee, the board may enforce the

1 order of payment by bringing an action in any appropriate court.
2 This right of enforcement shall be in addition to any other rights
the board may have as to any licensee directed to pay costs.

3 (d) In any judicial action for the recovery of costs, proof
4 of the board's decision shall be conclusive proof of the validity of
the order of payment and the terms for payment.

5 (e)(1) Except as provided in paragraph (2), the board shall
6 not renew or reinstate the license or approval of any person who
has failed to pay all of the costs ordered under this section.

7 (2) Notwithstanding paragraph (1), the board
8 may, in its discretion, conditionally renew or reinstate for a
9 maximum of one year the license or approval of any person who
demonstrates financial hardship and who enters into a formal
10 agreement with the board to reimburse the board within that one
year period for those unpaid costs.

11 (f) All costs recovered under this section shall be
12 deposited in the Physical Therapy Fund as a reimbursement in
either the fiscal year in which the costs are actually recovered or
the previous fiscal year, as the board may direct.

13 9. Section 2630 of the Code states:

14 It is unlawful for any person or persons to practice, or offer
15 to practice, physical therapy in this state for compensation received
or expected, or to hold himself or herself out as a physical
16 therapist, unless at the time of so doing the person holds a valid,
unexpired, and unrevoked license issued under this chapter.

17 Nothing in this section shall restrict the activities
18 authorized by their licenses on the part of any persons licensed
under this code or any initiative act, or the activities authorized to
19 be performed pursuant to Article 4.5 (commencing with Section
2655) or Chapter 7.7 (commencing with Section 3500).

20 A physical therapist licensed pursuant to this chapter may
21 utilized the services of one aide engaged in patient-related tasks to
assist the physical therapist in his or her practice of physical
22 therapy. "Patient-related task" means a physical therapy service
rendered directly to the patient by an aide, excluding non-patient-
23 related tasks. "Non-patient-related task" means a task related to
observation of the patient, transport of the patient, physical support
24 only during gait or transfer training, housekeeping duties, clerical
duties, and similar functions. The aide shall at all times be under
the orders, direction, and immediate supervision of the physical
25 therapist. Nothing in this section shall authorize an aide to
independently perform physical therapy or any physical therapy
26 procedure. The board shall adopt regulations that set forth the
standards and requirements for the orders, direction, and immediate
27 supervision of an aide by a physical therapist. The physical
therapist shall provide continuous and immediate supervision of
28 the aide. The physical therapist shall be in the same facility as, and

1 in proximity to, the location where the aide is performing patient-
2 related tasks, and shall be readily available at all times to provide
3 advice or instruction to the aide. When patient-related tasks are
4 provided to a patient by an aide, the supervising physical therapist
5 shall, at some point during the treatment day, provide direct service
6 to the patient as treatment for the patient's condition, or to further
7 evaluate and monitor the patient's progress, and shall
8 correspondingly document the patient's record.

9 The administration of massage, external baths, or normal
10 exercise not a part of a physical therapy treatment shall not be
11 prohibited by this section.

12 10. California Code of Regulations, title 16, section 1398.44, states:

13 A licensed physical therapist shall at all times be
14 responsible for all physical therapy services provided by the
15 physical therapist assistant. The supervising physical therapist has
16 continuing responsibility to follow the progress of each patient,
17 provide direct care to the patient and to assure that the physical
18 therapist assistant does not function autonomously. Adequate
19 supervision shall include all of the following:

20 (a) The supervising physical therapist shall be readily
21 available in person or by telecommunication to the physical
22 therapist assistant at all times while the physical therapist assistant
23 is treating patients. The supervising physical therapist shall provide
24 periodic on site supervision and observation of the assigned patient
25 care rendered by the physical therapist assistant.

26 (b) The supervising physical therapist shall initially
27 evaluate each patient and document in the patient record, along
28 with his or her signature, the evaluation and when the patient is to
be reevaluated.

(c) The supervising physical therapist shall formulate
and document in each patient's record, along with his or her
signature, the treatment program goals and plan based upon the
evaluation and any other information available to the supervising
physical therapist. This information shall be communicated
verbally, or in writing by the supervising physical therapist to the
physical therapist assistant prior to initiation of treatment by the
physical therapist assistant. The supervising physical therapist
shall determine which elements of the treatment plan may be
assigned to the physical therapist assistant. Assignment of these
responsibilities must be commensurate with the qualifications,
including experience, education and training, of the physical
therapist assistant.

(d) The supervising physical therapist shall reevaluate
the patient as previously determined, or more often if necessary,
and modify the treatment, goals and plan as needed. The
reevaluation shall include treatment to the patient by the
supervising physical therapist. The reevaluation shall be
documented and signed by the supervising physical therapist in the

1 patient's record and shall reflect the patient's progress toward the
2 treatment goals and when the next reevaluation shall be performed.

3 (e) The physical therapist assistant shall document each
4 treatment in the patient record, along with his or her signature. The
5 physical therapist assistant shall document in the patient record and
6 notify the supervising physical therapist of any change in the
7 patient's condition not consistent with planned progress or
8 treatment goals. The change in condition necessitates a
9 reevaluation by a supervising physical therapist before further
10 treatment by the physical therapist assistant.

11 (f) Within seven (7) days of the care being provided by
12 the physical therapist assistant, the supervising physical therapist
13 shall review, cosign and date all documentation by the physical
14 therapist assistant or conduct a weekly case conference and
15 document it in the patient record. Cosigning by the supervising
16 physical therapist indicates that the supervising physical therapist
17 has read the documentation, and unless the supervising physical
18 therapist indicates otherwise, he or she is in agreement with the
19 contents of the documentation.

20 (g) There shall be a regularly scheduled and
21 documented case conference between the supervising physical
22 therapist and physical therapist assistant regarding the patient. The
23 frequency of the conferences is to be determined by the supervising
24 physical therapist based on the needs of the patient, the supervisory
25 needs of the physical therapist assistant and shall be at least every
26 thirty calendar days.

27 (h) The supervising physical therapist shall establish a
28 discharge plan. At the time of discharge, or within 7 (seven) days
thereafter, a supervising physical therapist shall document in the
patient's record, along with his or her signature, the patient's
response to treatment in the form of a reevaluation or discharge
summary.

11. Section 810 of the Code states:

(a) It shall constitute unprofessional conduct and
grounds for disciplinary action, including suspension or revocation
of a license or certificate, for a health care professional to do any of
the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented
any false or fraudulent claim for the payment of a loss under a
contract of insurance.

(2) Knowingly prepare, make, or subscribe any
writing, with intent to present or use the same, or to allow it to be
presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension
of a license or certificate for a health care professional to engage in

1 any conduct prohibited under Section 1871.4 of the Insurance Code
2 or Section 550 of the Penal Code.

3 (c) (1) It shall constitute cause for automatic suspension of
4 a license or certificate issued pursuant to Chapter 4 (commencing
5 with Section 1600), Chapter 5 (commencing with Section 2000),
6 Chapter 6.6 (commencing with Section 2900), Chapter 7
7 (commencing with Section 3000), or Chapter 9 (commencing with
8 Section 4000), or pursuant to the Chiropractic Act or the
9 Osteopathic Act, if a licensee or certificate holder has been
10 convicted of any felony involving fraud committed by the licensee
11 or certificate holder in conjunction with providing benefits covered
12 by worker's compensation insurance, or has been convicted of any
13 felony involving Medi-Cal fraud committed by the licensee or
14 certificate holder in conjunction with the Medi-Cal program,
15 including the Denti-Cal element of the Medi-Cal program,
16 pursuant to Chapter 7 (commencing with Section 14000), or
17 Chapter 8 (commencing with Section 14200), of Part 3 of Division
18 9 of the Welfare and Institutions Code. The board shall convene a
19 disciplinary hearing to determine whether or not the license or
20 certificate shall be suspended, revoked, or some other disposition
21 shall be considered, including, but not limited to, revocation with
22 the opportunity to petition for reinstatement, suspension, or other
23 limitations on the license or certificate as the board deems
24 appropriate.

25 (2) It shall constitute cause for automatic
26 suspension and for revocation of a license or certificate issued
27 pursuant to Chapter 4 (commencing with Section 1600), Chapter 5
28 (commencing with Section 2000), Chapter 6.6 (commencing with
Section 2900), Chapter 7 (commencing with Section 3000), or
Chapter 9 (commencing with Section 4000), or pursuant to the
Chiropractic Act or the Osteopathic Act, if a licensee or certificate
holder has more than one conviction of any felony arising out of
separate prosecutions involving fraud committed by the licensee or
certificate holder in conjunction with providing benefits covered by
worker's compensation insurance, or in conjunction with the Medi-
Cal program, including the Denti-Cal element of the Medi-Cal
program pursuant to Chapter 7 (commencing with Section 14000),
or Chapter 8 (commencing with Section 14200), of Part 3 of
Division 9 of the Welfare and Institutions Code. The board shall
convene a disciplinary hearing to revoke the license or certificate
and an order of revocation shall be issued unless the board finds
mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that
paragraph (2) apply to a licensee or certificate holder who has one
or more convictions prior to January 1, 2004, as provided in this
subdivision.

(4) Nothing in this subdivision shall preclude a
board from suspending or revoking a license or certificate pursuant
to any other provision of law.

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1 (5) "Board," as used in this subdivision, means
2 the Dental Board of California, the Medical Board of California,
3 the Board of Psychology, the State Board of Optometry, the
4 California State Board of Pharmacy, the Osteopathic Medical
Board of California, and the State Board of Chiropractic
Examiners.

5 (6) "More than one conviction," as used in this
6 subdivision, means that the licensee or certificate holder has one or
7 more convictions prior to January 1, 2004, and at least one
8 conviction on or after that date, or the licensee or certificate holder
9 has two or more convictions on or after January 1, 2004. However,
a licensee or certificate holder who has one or more convictions
prior to January 1, 2004, but who has no convictions and is
currently licensed or holds a certificate after that date, does not
have "more than one conviction" for the purposes of this
subdivision.

10 (d) As used in this section, health care professional
11 means any person licensed or certified pursuant to this division, or
12 licensed pursuant to the Osteopathic Initiative Act, or the
Chiropractic Initiative Act.

FIRST CAUSE FOR DISCIPLINE

Patient P.C.

(Unlawful Practice of Physical Therapy)
[Bus. & Prof. Code §§ 2630, 2660(i)]

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14
15 12. Respondent is subject to disciplinary action under sections 2630 and
16 2660(i) of the Code in that she practiced physical therapy without a license and beyond the scope
17 of her physical therapy assistant license. The circumstances are as follows:

18 13. On or about February 24, 2000, P.C.¹ was assessed by a physician and
19 prescribed physical therapy services including therapeutic swimming pool services for P.C.'s left
20 knee.

21 14. From at least May 1999 through December 2000, Respondent was the
22 owner of Aquatic and Exercise and Rehab, Inc., in Sacramento, California, (hereinafter
23 "Aquatic") where she worked as a licensed physical therapy assistant and provided physical
24 therapy services to patients with the use of a swimming pool at Aquatic (pool therapy).

25 15. On or about March 8, 15, 27, and 29, 2000, Respondent, provided
26

27
28 1. The full names of all patients referred to herein will be made available to Respondent
upon a timely request for discovery.

1 physical therapy services to patient P.C. without an assessment of the patient by a licensed
2 physical therapist.

3 16. On or about March 8, 15, 27, and 29, 2000, Respondent, independently,
4 autonomously, and without the supervision of a licensed physical therapist, provided physical
5 therapy services to patient P.C.

6 17. Respondent's conduct as set forth in paragraphs 13 and 14, above,
7 constitutes the unlawful practice of physical therapy within the meaning of section 2630 of the
8 Code and conduct subject to discipline within the meaning of Code section 2660(i).

9 **SECOND CAUSE FOR DISCIPLINE**

10 **Patient P.C.**

(Gross Negligence)

11 [Bus. & Prof. Code § 2660(h)]

12 18. Complainant incorporates by reference paragraphs 13, 14, 15 and 16,
13 above, as if fully set forth at this point.

14 19. Respondent's conduct as set forth in paragraphs 13, 14 15 and 16, above,
15 constitutes gross negligence within the meaning of section 2660(h) of the Code and is subject to
16 discipline.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **Patient L.A.**

(Unlawful Practice of Physical Therapy)

19 [Bus. & Prof. Code §§ 2630, 2660(i)]

20 20. Respondent is subject to disciplinary action under sections 2630 and
21 2660(i) of the Code in that she practiced physical therapy without a license and beyond the scope
22 of her physical therapy assistant license. The circumstances are as follows:

23 21. On or about May 26, 1999, Respondent began providing physical therapy
24 services to patient L.A., through the use of a swimming pool at Aquatic, under the supervision of
25 Lise Oberth, a licensed physical therapist. William Slavensky, a chiropractor, had prescribed the
26 physical therapy services for L.A.

27 22. In a status report dated September 29, 1999, Respondent wrote to the
28 chiropractor, Dr. Slavensky, informing him of L.A.'s status in physical therapy as well as

1 assessment information including the patient's irritability level. The status letter and the
2 patient's assessment information that Respondent provided to the chiropractor required the
3 supervising physical therapist's input and approval which Respondent did not obtain.

4 23. Respondent's conduct as set forth in paragraphs 16 and 17, above,
5 constitutes the unlawful practice of physical therapy within the meaning of section 2630 of the
6 Code and conduct subject to discipline within the meaning of Code section 2660(i).

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **Patient L.A.**

(Gross Negligence)

[Bus. & Prof. Code § 2660(h)]

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10 24. Complainant incorporates by reference paragraphs 21 and 22, above, as if
11 fully set forth at this point.

12 25. Respondent's conduct as set forth in paragraphs 21 and 22, above,
13 constitutes gross negligence within the meaning of section 2660(h) of the Code and is therefore
14 subject to discipline.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **Patient C.C.**

(Unlawful Practice of Physical Therapy)

[Bus. & Prof. Code §§ 2630, 2660(i)]

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18 26. Respondent is subject to disciplinary action under sections 2630 and
19 2660(i) of the Code in that she practiced physical therapy without a license and beyond the scope
20 of her physical therapy assistant license. The circumstances are as follows:

21 27. In 1999, Respondent began providing physical therapy services to C.C.,
22 through the use of a swimming pool at Aquatic. Most of the physical therapy services
23 Respondent provided were under the supervision of a licensed physical therapist who was located
24 at a different establishment.

25 28. In February 2000, Respondent was providing physical therapy services to
26 patient C.C. at Aquatic, under the supervision of Robin Wham, a licensed physical therapist who
27 worked out of Ms. Wham's place of business, Capital Physical Therapy in Sacramento,
28 California. C.C. was receiving physical therapy services for a back problem and back pain.

1 29. On February 22, 2000, Respondent noted in C.C.'s chart that the patient
2 had slipped in the yard, fell, and had a big bruise on the right medial knee. Respondent also
3 noted in the patient's chart that the bruised knee seemed to tolerate well the physical therapy
4 services Respondent provided. Before providing physical therapy services to C.C. on
5 February 22, 2000, Respondent should have first informed her supervising physical therapist,
6 Ms. Wham, of C.C.'s injured right knee to allow Ms Wham the opportunity to assess and/or
7 determine whether the physical therapy services to the patient should be modified. Respondent
8 failed to so inform Ms. Wham.

9 30. Respondent charted that the patient's bruised knee tolerated well the
10 physical therapy services Respondent had provided on February 22, 2000. This constitutes an
11 assessment which Respondent is not licensed to perform.

12 31. Respondent's conduct as set forth in paragraphs 23, 24 and 25, above,
13 constitutes the unlawful practice of physical therapy within the meaning of section 2630 of the
14 Code and is therefore conduct subject to discipline within the meaning of Code section 2660(i).

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **Patient C.C.**

17 (Gross Negligence)

18 [Bus. & Prof. Code § 2660(h)]

19 32. Complainant incorporates by reference paragraphs 27, 28, 29, and 30,
20 above, as if fully set forth at this point.

21 33. Respondent's conduct as set forth in paragraphs 27, 28, 29 and 30, above,
22 constitutes gross negligence within the meaning of section 2660(h) of the Code and is subject to
23 discipline.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **Patient C.S.**

26 (Unlawful Practice of Physical Therapy)

27 [Bus. & Prof. Code §§ 2630, 2660(i)]

28 34. Respondent is subject to disciplinary action under sections 2630 and
29 2660(i) of the Code in that she practiced physical therapy without a license and beyond the scope
30 of her physical therapy assistant license. The circumstances are as follows:

1 35. In October 1999, Respondent was providing physical therapy services to
2 patient C.S. at Aquatic, under the supervision of Stacey O'Brien, a licensed physical therapist
3 who was employed by, and worked at Alliance West, in Sacramento, California. C.S. was
4 receiving physical therapy for a back sprain and back pain.

5 36. On October 18, 1999, Respondent noted in C.S.'s chart that the patient
6 was very sore, fell on oil and slipped, and shoulder still numb. On the above date, Respondent,
7 without first informing her supervising physical therapist of the patient's injury, provided
8 physical therapy services to C.S. Before providing physical therapy services to C.S. on
9 October 18, 1999, Respondent should have first informed her supervising physical therapist,
10 Ms. O'Brien, of C.S.'s injured shoulder to allow Ms. O'Brien the opportunity to assess and/or
11 determine whether the physical therapy services to the patient should be modified. Respondent
12 failed to so inform Ms. O'Brien.

13 37. Respondent's conduct as set forth in paragraphs 33 and 34, above,
14 constitutes the unlawful practice of physical therapy within the meaning of section 2630 of the
15 Code and therefore the conduct is subject to discipline within the meaning of Code section
16 2660(i).

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **Patient C.S.**

19 (Gross Negligence)

20 [Bus. & Prof. Code § 2660(h)]

21 38. Complainant incorporates by reference paragraphs 35 and 36, above, as if
22 fully set forth at this point.

23 39. Respondent's conduct as set forth in paragraphs 35 and 36, above,
24 constitutes gross negligence within the meaning of section 2660(h) of the Code and is subject to
25 discipline.

26 **NINTH CAUSE FOR DISCIPLINE**

27 **Patient C.S.**

28 (Unlawful Practice of Physical Therapy)

 [Bus. & Prof. Code §§ 2630, 2660(i)]

 40. Respondent is subject to disciplinary action under sections 2630 and

1 2660(i) of the Code in that she practiced physical therapy without a license and beyond the scope
2 of her physical therapy assistant license. The circumstances are as follows:

3 41. In October 1999, Respondent was providing physical therapy services to
4 patient C.S. at Aquatic, under the supervision of Stacey O'Brien, a licensed physical therapist
5 who was employed by, and worked at Alliance West, in Sacramento, California. C.S. was
6 receiving physical therapy for a back sprain and back pain.

7 42. In a status report dated November 15, 1999, Respondent wrote C.S.'s
8 physician, Daniel Dunlevy, M.D., informing him of C.S.'s status in physical therapy as well as
9 assessment information including the patient's irritability level. The status letter and the
10 patient's assessment information that Respondent provided to the physician required the
11 supervising physical therapist's input and approval which Respondent did not obtain.

12 43. Respondent's conduct as set forth in paragraphs 37 and 38, above,
13 constitutes the unlawful practice of physical therapy within the meaning of section 2630 of the
14 Code and therefore the conduct is subject to discipline within the meaning of Code section
15 2660(i).

16 **TENTH CAUSE FOR DISCIPLINE**

17 **Patient C.S.**

18 (Gross Negligence)

[Bus. & Prof. Code § 2660(h)]

19 44. Complainant incorporates by reference paragraphs 41 and 42, above, as if
20 fully set forth at this point.

21 45. Respondent's conduct as set forth in paragraphs 41 and 42, above,
22 constitutes gross negligence within the meaning of section 2660(h) of the Code and is subject to
23 discipline.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 (Unprofessional Conduct)

[Bus. & Prof. Code § 2660(h)]

26 46. In May 2000, Respondent employed Stacy O'Brien, a licensed physical
27 therapist, to work as a physical therapist at Aquatic. Ms. O'Brien's duties at Aquatic included
28 supervising Respondent's work as a licensed physical therapy assistant.

1 47. From on or about June 1, 2000, through on or about July 28, , 2000,
2 Respondent, while under the supervision of her employee, Stacy O'Brien, provided physical
3 therapy services to patient C.H. , at Aquatic, on approximately 6 occasions. Respondent's
4 provision of physical therapy services to C.H., while under the supervision of her employee,
5 Stacy O'Brien, constitutes a conflict of interest.

6 48. From on or about June 1, 2000, through on or about November 27, 2000,
7 Respondent, while under the supervision of her employee, Stacy O'Brien, provided physical
8 therapy services to patient M.L., at Aquatic, on approximately 16 occasions. Respondent's
9 provision of physical therapy services to M.L., while under the supervision of her employee,
10 Stacy O'Brien, constitutes a conflict of interest.

11 49. Respondent's conduct as set forth in paragraphs 47 and 48, above,
12 constitutes unprofessional conduct within the meaning of section 2660 of the Code and therefore
13 the conduct is subject to discipline.

14 **TWELFTH CAUSE FOR DISCIPLINE**
15 (Repeated Negligent Acts)
16 [Bus. & Prof. Code §2234(c)]

16 50. Complainant incorporates by reference paragraphs 13, 14, 15, 16, 21, 22,
17 27, 28, 29, 30, 35, 36, 41 and 42, as if fully set forth at this point.

18 51. Respondent's conduct as set forth in paragraphs 13, 14, 15, 16, 21, 22, 27,
19 28, 29, 30, 35, 36, 41 and 42, above, and any combination thereof, constitutes repeated negligent
20 acts within the meaning of section 2234 (c) of the Code and therefore subject to discipline.

21
22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Physical Therapy Board of California issue a
25 decision:

26 1. Revoking or suspending Physical Therapy Assistant Number AT 2054,
27 issued to Mary L. Tresler;
28

2. Ordering Mary L. Tresler to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5; and

3. Taking such other and further action as deemed necessary and proper.

DATED: August 13, 2004

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant